

Appl. No. 10/045,724
Response dated September 2, 2005
Reply to Final Office Action of July 7, 2005

Remarks/Arguments

History:

The present application was filed on October 26, 2001. On or about February 9, 2005 a first Office Action was mailed that rejected all claims. An Amendment and Response was filed on or about June 9, 2005 wherein claim 18 was amended to clarify the claim language and arguments were advanced seeking to traverse the Examiner's claim rejections. On July 7, 2005 a Final Office action was mailed that maintained the original rejections of all 20 claims.

Status and this Response:

Claims 1-20 are pending and stand rejected on varying grounds under §102(b) and 103(a).

No claims are being amended, canceled, or added and no other amendments are being proposed.

In view of the comments below, Applicant respectfully submits that the rejections have been traversed and thus requests that the Examiner reconsider the present application including claims 1-20 and withdraw the rejection of these claims.

a) Claims 1, 2, 5, 8, 9, 11-12, 15, and 17-20 stand rejected under 35 U.S.C. 102(b) as being anticipated by Tessler et al (U.S. Patent No. 5,629,868).

Claims 1, 11, and 18 are in independent form with all other claims dependent on the closest lower numbered independent claim.

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As noted in the June 9, 2005 response, the present invention deals with various aspects of obtaining appropriate commands from a web site for effecting a desired function by an intelligent device. Claim 1 defines a method that includes defining in a wireless internet access device (WIAD) a desired function to be performed by the intelligent device, notifying the web site of the intelligent device and desired function through a wireless communication network, returning to the WIAD from the web site a subset of control instructions for controlling the intelligent device to perform the desired function and forwarding the subset of control instructions to the intelligent device all as specifically claimed. It is noted that Applicant is not claiming all approaches for programming a remote control; rather only those methods and apparatus specifically defined by the claims.

Tessler et al. concerns programming a remote control with appropriate data to control a selected appliance and may be viewed as related art. According to Tessler et al. this is done automatically (col. 2, lines 15-16) and includes selecting an appliance via a menu on a TV – the menu provided from local memory by a subscriber station on demand (the demand presumably from the remote control 39). The subscriber (user of the remote control) selects an appliance of interest (in some fashion?) and enters a “teach” command at the remote control which sends the “teach” command to the subscriber station 18. Responsive to the “teach” command sent by the remote control 39 to the subscriber station 18 (also described variously as a terminal and a converter/controller circuit (col. 5, line 4)), the corresponding control sequences are retrieved from a local memory (at the subscriber station) and transmitted to the remote control (see col. 2, lines 42-46). The subscriber station obtains control sequences from a Cable TV head end 3 via some scheme (selecting sets of control data as they are broadcast). The user views the screen and

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selects an appliance from the menu list, e.g., by closing a switch corresponding to a menu selection, which results in a command being sent col.5, lines 45-48);

Issue: Whether Tessler et al. anticipates the wireless internet access device and functional features thereof as recited by claim 1

The Examiner construes the TV remote control as a wireless internet access device and the subscriber station as a web site, citing col. 2, lines 36-50. In Applicant's view this is not a proper construction of these entities. Nothing in Tessler et al. ever mentions or otherwise suggests that the remote control is a web access device and similarly nothing suggests that the subscriber station or terminal could or would ever be reasonably construed as a web site.

Responsive to Applicant's views, in the Final Office Action, the Examiner states (point 1):

"Applicant's rationale is incorrect. Applicant is construing limitations from the specification into the claim. Applicant is not claiming that the WIAD accesses the internet, merely using this as a label of a device. What Applicant is claiming is that the WIAD brokers commands on behalf of an intelligent device. No recitation of accessing the internet is claimed. Furthermore it can be construed that the TV remote control can be considered a wireless internet access device since it provides access wirelessly to the user since all the codes are transmitted from the head end which are broadcasted to all subscribers from the cable company via optical fiber and even on demand by a telephone call (col. 2, lines 25-35). This clearly demonstrates that the TV remote control can be construed as a wireless internet access device. By this rationale, the rejection is maintained."

In Applicant's respectfully considered view, the Examiner is mistaken. Applicant's representative is construing the claim language and is aware that mere labels (relative

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expressions, e.g., big, first, etc.) are not (and appropriately so) given patentable weight, however quantitative or definitive expressions should be given the reasonable meaning that one of ordinary skill gives such expressions. Applicant further respectfully submits that one of ordinary skill clearly recognizes that a wireless internet access device is a device that is suitable for wirelessly accessing the internet and thus at least for this reason any allegation that a reference anticipates the claimed "defining in a wireless internet access device (WIAD) a desired function to be performed by the intelligent device" and other claimed features of claim 1 should take "wireless internet access" device into consideration.

Furthermore, wireless access is not necessarily wireless internet access, e.g., as evidenced by Tessler et al., although Tessler et al may be reasonably construed to show wireless access at least from a remote control to a subscriber station. Additionally, the claimed "identifying ... to a web site ... by the WIAD, through a wireless communication network;" shows or strongly suggests the WIAD performing wireless internet access, given that web sites are commonly understood to be entities (logical or physical) that are accessible via the internet. Thus and in view of these reasons, Applicant respectfully submits that the elements of claim 1 that recite performance of a process by a WIAD are not shown or suggested by Tessler et al.

Issue: Whether Tessler et al. anticipates the web site and functional features thereof as recited by claim 1

With respect to Applicant's respectfully considered view that Tessler et al. does not show or suggest a web site as recited variously by claim 1, the Examiner states (point 2):

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"Applicant is reading limitations into the claim from the specification. A reasonable interpretation of the claimed term "web site" is "an entity which serves another entity data using a communications medium", also known as a server. The subscriber station serves the remote control the command codes used to reprogram the remote control. In this essence, the subscriber station acts as a web site for the remote control. By this rationale, the rejection is maintained."

Applicant's representative again assures the Examiner that the language of the claim is being read and reasonably construed. While web site may not have a single or hard definition, accepted definitions by those of ordinary skill (Examiner is encouraged to look at Google for a definition of web site) normally either refer to the collection of associated web pages or other information available via a unique address (URL, URI, IP) or alternatively the computer from which the web pages or other information is made available. For example, one definition of web site states "virtual location for an organization's presence on the World Wide Web, usually making up several web pages and a single home page designated by a unique URL." Everyday usage of web site likely encompasses sites on the web as well as the internet.

Applicant strongly disagrees with the Examiner's suggestion that a server = a web site and submits that one of ordinary skill would not construe just any server as being a website, simply because as the name has come to imply the server provides data to another entity. For example, many offices (Applicant's representative's included) have a server that would never be construed as a web site by those of ordinary skill. Thus and in view of these reasons, Applicant respectfully submits that the subscriber station, notwithstanding having down stream access to a cable TV head end via reception of broadcast information and ability to forward this information to a TV remote control, is not and is not susceptible to being reasonably construed as a web site.

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Issue: Whether Tessler et al. anticipates the defining, in a wireless internet access device, a desired function to be performed by the intelligent device and functional relationships thereof as recited by claim 1.

With respect to Applicant's view that Tessler et al. does not anticipate the claimed defining process, the Examiner states:

"Applicant's attention is requested [??] to Tessler, col. 2 lines 40-45. Applicant will find out that the subscriber (i.e. the user) selects whichever is of interest from the list and then *transmits the teach code to the subscriber station*. To one of ordinary skill in the art, this clearly shows the step of defining a desired function to be performed by the intelligent device. By this rationale, the rejection is maintained."

In Applicant's view sending a teach code that corresponds to a particular appliance from the remote control to the subscriber station does not anticipate defining in a WIAD a desired function to be performed by the intelligent device. The remote control has no idea of what functions will be controllable as a result of this activity, although I suppose the user would expect that control of ON/OFF and other expected functions of the selected appliance would be provided.

Issue: Whether Tessler et al. anticipates the identifying the intelligent device and the desired function to a web site having access to control instructions for the intelligent device by the WIAD, through a wireless communication network and functional relationships thereof as recited by claim 1.

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With regard to Applicant's view that Tessler et al. does not anticipate the "identifying the intelligent device and the desired function to a web site having access to control instructions for the intelligent device by the WIAD, through a wireless communication network", the Examiner states (point 4):

"As to point (4) Applicant's rationale could not be more incorrect. Applicant is advised to consult a dictionary as to the definition of the term "network". The Office utilized Microsoft Computer Dictionary which defines "network" as "a group of computers (i.e. the remote control and the headend) and associated devices that are connected by communications facilities". Applicant is arguing that a wireless link is not a communication network, as well as a Cat5 cable is also not a communication network, it is the connection as well as the remote control and the subscriber station that makes the wireless link a communication network. Applicant provides no rationale as to why a wireless link is not a communication network, however the Office has provided sufficient proof that the wireless link of Tessler connecting the remote control to the subscriber station is clearly a wireless communication network. By this rationale, the rejection is maintained."

Applicant is appreciative of the insight the Examiner has gleaned from the Microsoft Dictionary, however Applicant would caution the Examiner as to how much weight to associate with any one authority. Applicant using "definition communication network" in Google found that "a network is a series of points or nodes interconnected by communication paths." as well as various references to two or more computers and associated communication links.

Be that as it may, Applicant submits that to anticipate the claimed feature, a reference must show a WIAD, a web site, and a wireless communication network where the WIAD via the wireless communication network identifies the device and function to the website all as claimed. Assuming *arguendo* that the TV remote control may be viewed as a WIAD and the subscriber station as a website, Applicant observes the only thing left as the wireless communication

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network in Tessler et al is the wireless link between the remote control and subscriber station. Applicant respectfully submits that a wireless link is not reasonably subject to being viewed as a wireless communication network as construed by one of ordinary skill, the Microsoft Dictionary, or any other authority that Applicant has found.

As noted in the June 9, 2005 response with reference to claim 11, a WIAD is defined that interacts via a communication network with a web site to identify an intelligent device and desired functionality and thus obtain an appropriate response with control instructions from the web site all as claimed. As noted earlier the system of Tessler et al and specifically the remote control and the subscriber station are clearly not a WIAD or web site, respectively and thus Tessler et al. does not show or suggest the claimed WIAD.

As noted in the June 9, 2005 response with reference to claim 18 a web site is defined that interfaces with a WIAD via a communication network to facilitate providing appropriate commands to control an intelligent device. Tessler et al. does not show or suggest any such web site and the subscriber device of Tessler et al. is not subject in good faith to being construed as a web site. Furthermore any interaction between the remote control and subscriber station is not via a communication network, but rather via an IR link.

For at least the reasons noted above, all elements of the claimed inventions are not shown or suggested by Tessler et al., and thus this reference does not support a 102(b) rejection of independent claims 1, or 11, or 18 or, at least by virtue of dependency, claims that are

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respectively dependent thereon. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1, 2, 5, 8, 9, 11-12, 15 and 17-20 under 35 U.S.C. 102(b) based on Tessler et al (USPN 5,629,868).

b) Claims 3, 4, 6, 7, 13, 14, and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tessler et in view of Maymudes (U.S. Patent No. 6,748,278).

As noted in the June 9, 2005 response, Claims 3, 4, 6, and 7 are dependent on claim 1 and claims 13, 14, and 16 are dependent on claim 11. Maymudes does not supply the teachings that are believed to be missing from Tessler et al and thus claims 1 and 11 are believed to be allowable over these references whether taken alone or together. Thus at least by virtue of dependency claims 3, 4, 6, 7, 13, 14, and 16 should also be allowable. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 3, 4, 6, 7, 13, 14, and 16 under 35 U.S.C. 103(a) based on Tessler et al. in view of Maymudes (USPN 6,748,278).

c) Claim 10 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Tessler et in view of Baun et al (U.S. Pub. No. 2003/0197930).

As noted in the June 9, 2005 response, Claim 10 is dependent on claim 1 and claim 1 is believed to be allowable over these references. Thus at least by virtue of dependency, claim 10 should also be allowable. Therefore, Applicant respectfully requests that the Examiner

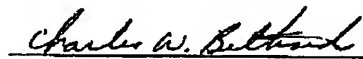
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reconsider and withdraw the rejection of claim 10 under 35 U.S.C. 103(a) based on Tessler in view of Baun et al (US 2003/0197930).

From the above comments and observations, claims 1-20 appear to be clearly and patentably distinct and different from the cited references. Accordingly, Applicant respectfully submits that the claims clearly and patentably distinguish over the cited reference of record and as such are to be deemed allowable. Such allowance is hereby earnestly and respectfully solicited at an early date. If the Examiner has any suggestions or comments or questions, calls are welcomed at the phone number below.

Since this Response is being timely filed within two months of the Final Office Action it is anticipated that the allowed three months will lapse on the later of the original three month time period of the mailing date of any Advisory Action. Although it is not anticipated that any fees are due or payable, the Commissioner is hereby authorized to charge any fees that may be required to Deposit Account No. 50-3435.

Respectfully submitted,



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